

HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
Writ Petition No.2968 of 2007

Between:

In Re Municipal Corporation of Hyderabad, represented
by its Commissioner and others

... Respondents

:: ORDER ::

Counsel for Respondent Nos.1 to 3: Smt.Kalpana Ekbote

Counsel for Respondents No.4 & 5: Government Pleader for
Municipal Administration
and Urban Development

Counsel for Respondent Nos.6
to 11: Shri Mahmood Ali

July 24, 2007

Per G.S. Singhvi, CJ

While disposing of Writ Petition No.17705 of 2006 filed by Mr.Harish D. Patel and others for quashing notice dated 21.8.2006 issued by Commissioner, Municipal Corporation of Hyderabad (now Greater Hyderabad Municipal Corporation) (for short, 'the Corporation') under Section 636 of the Hyderabad Municipal Corporation Act, 1955 (for short, 'the 1955 Act') for demolition of illegal construction raised in the building known as "Maheshwari Chambers", the Court took suo motu cognizance of the fact that the entire building appears to have been constructed without sanctioned plan and without complying

with the conditions enumerated in Building Regulation Scheme (BRS), approval intimation letter dated 25.9.2000 issued by Chief City Planner of the Corporation, and directed issue of notice to the officers of the Corporation requiring them to file reply affidavit within two weeks. For the sake of reference, the Court's order dated 29.11.2006 is reproduced below:

"In this petition, the petitioners have prayed for quashing notice dated 21.8.2006 issued by the Commissioner of Municipal Corporation of Hyderabad under Section 636 of Hyderabad Municipal Corporation Act, 1955 for demolition of illegal construction raised in the building known as Maheshwari Chambers.

One of the grounds on which the petitioners have questioned the impugned notice is that the same is addressed to M/s Association of Maheshwari Chambers and not to any of them. This assertion of the petitioners has not been controverted in the counter filed on behalf of the Municipal Corporation of Hyderabad.

In view of the above, we do not consider it necessary to adjudicate on the legality of the action initiated by the Municipal Corporation for removal of the unauthorized construction made in premises bearing No.6-3-650 situate at Somajiguda and dispose of the writ petition with the direction that the competent authority shall issue notice to each of the petitioners and other purchasers/occupiers of the building in question, give them opportunity of hearing and then pass appropriate orders in accordance with law.

While disposing of the writ petition in the manner indicated above, we deem it proper to take cognizance of the fact that the entire building of Maheshwari Chambers appears to have been constructed without sanctioned plan and without complying with the conditions enumerated in Building Regulation Scheme (B.R.S.) approval intimation letter dated 25.9.2000 issued by Chief City Planner, Municipal Corporation of Hyderabad. It also appears that the builder has violated the mandatory conditions incorporated in Andhra Pradesh Fire Services Act, 1999. It will be, therefore, appropriate for the concerned authorities of the Corporation to take action keeping in view the judgments of the Supreme Court in and **M.I. BUILDERS PVT. LTD. vs. RADHEY SHYAM SAHU AND OTEHRS^[1]**, **HOTEL SEA GULL vs. STATE OF WEST BENGAL AND OTEHRS^[2]**, **FRIENDS COLONY DEVELOPMENT COMMITTEE vs. STATE OF ORISSA AND OTEHRS^[3]**, **RAJINDER SINGH vs. STATE OF HARYANA^[4]**, **SUSHANTA TAGORE AND OTEHRS vs. UNION OF INDIA AND OTEHRS^[5]**, **MUNICIPAL CORPORATION, CHANDIGARH & OTHERS vs. SHANTIKUNJ INVESTMENT (P) LTD., AND OTHERS^[6]** and **M.C. MEHTA vs. UNION OF INDIA AND OTEHRS^[7]**.

We have considered it imperative to take suo moto cognizance because the entire concept of planned development has gone haywire due to monstrous growth of illegal constructions (constructions made in violation of sanctioned plan), constructions made in violation of master plan/zonal plan etc., and on that account multifarious problems like acute congestion of traffic, pollution, enormous growth in accidents is being faced by the common man. In many areas, people have to spend hours for traveling few kilometers. The major cause for this malady is rampant growth of unauthorized structures and blatant and unchecked violation of the master plan and the zonal plan.

At this stage, it is not proper for us to express any definite opinion on the culpability of the officers of the Municipal Corporation of Hyderabad, but the State

Government is expected to take action in the matter in accordance with law.

Smt. Jyoti Kiran, learned counsel appearing for Municipal Corporation of Hyderabad is permitted to accept notice of this suo moto cognizance and file reply affidavit within two weeks giving names of the officers who held the positions of Commissioner, Chief City Planner, and Assistant City Planner Municipal Corporation of Hyderabad, when such constructions were allowed to be made.

Put up on 27th December, 2006.”

In compliance of the above reproduced order, Shri K. Dhananjaya Reddy, Additional Commissioner (Planning) of the Corporation filed affidavit dated 20.3.2007 and disclosed the names of the officers, who held the posts of Commissioner, Chief City Planner, Assistant City Planner of Municipal Corporation of Hyderabad during whose tenure large number of constructions were raised in violation of the master plan and zonal plan.

On 5.4.2007, the Court, after taking cognizance of the statement made by the learned Special Government Pleader that notice under Section 636 of the 1955 Act has been issued to the owner and occupiers of M/s.Maheshwari Chambers and that demolition exercise is likely to be resisted by the builder, directed Commissioner of Police, Hyderabad to provide adequate protection to the officers/officials of the Corporation.

Immediately thereafter, M/s.Maheshwari Mega Ventures Limited (formerly M/s.Maheshwari Builders) (respondent No.6) filed WPMP Nos.9178 and 9179 of 2007 for its impleadment as party and for stay of action initiated by the authorities for demolition of the illegal construction. The counsel representing the applicant also made a request for house motion on 8.4.2007, which was accepted by Hon'ble Sri Bilal Nazki, J. After hearing the counsel for the applicant on 8.4.2007, the Division Bench headed by Hon'ble Sri Bilal Nazki, J. adjourned the case to 9.4.2007 with a direction to the Corporation not to carry out demolition work on that day.

It is borne out from the record that on 26.3.2007 respondent No.6 also filed revision before the State Government questioning notice dated 24.3.2007 issued by the Corporation and on that very day, an omnibus stay was granted by Principal Secretary to Government, Municipal Administration Department.

On 9.4.2007, the Court allowed WPMP No.9178 of 2007 and ordered impleadment of M/s.Maheshwari Mega Ventures Limited as party to the writ petition. By another order dated 9.4.2007, the Court directed the revisional authority to pass appropriate order on the revision filed by M/s.Maheshwari Mega Ventures Limited. That order reads as under:

“WPMP No. 9179 of 2007

This is an application by M/s. Maheshwari Mega Ventures Limited for

suspending the operation and effect of order dated 5-4-2007 passed in Writ Petition No.2968 of 2007.

We have heard Shri V. Venkataramana, learned counsel for the applicant and perused the contents of the affidavit of Shri Raj Kumar Malpani filed in support of this application as also the affidavit and documents filed in support of WPMP No. 9178 of 2007, which has been disposed of today by a separate order.

A reading of the orders passed in Suo Motu Writ Petition No.2968 of 2007 shows that the Court has not issued any direction for demolition of the illegal construction made in the building known as M/s. Maheswari Chambers. Rather, after taking cognizance of the statement made by the counsel for the Municipal Corporation that action has already been initiated under the Hyderabad Municipal Corporation Act, 1955 (for short, 'the Act') for demolition of the illegal structure, the Court directed Commissioner of Police, Hyderabad to provide adequate police protection to the officers and officials of the Municipal Corporation who were to enforce the provisions of the Act and related statutory provisions which have bearing on the illegal and unauthorized constructions in M/s. Maheswari Chambers.

In our opinion, the Court is not only entitled but is duty bound to provide protection to the public authorities engaged in the exercise of enforcing the provisions of law. Therefore, the prayer made by the applicant for suspending operation of order dated 5-4-2007 is rejected and the application is dismissed.

While disposing of the above noted miscellaneous petition, we deem it proper to take cognizance of the fact that on a revision petition filed by the applicant against notice dated 24-3-2007 issued by Municipal Corporation of Hyderabad, the State Government passed an omnibus stay order on 26-3-2007 without any time limit.

A perusal of the memo of revision, copy of which has been placed on the record of this application shows that while invoking revision powers of the State Government, the petitioner concealed the fact that while disposing of Writ Petition No.17705 of 2006, the Court suo motu took cognizance of the illegal and unauthorized constructions and directed the Municipal Corporation of Hyderabad to file an affidavit giving the particulars of the officers during whose tenure illegal and unauthorized constructions were raised. This exercise was considered imperative to fix the accountability of the officers concerned after giving them notice and opportunity of hearing. We are sure, if the petitioner has disclosed the factum of the suo motu cognizance taken by the Court vide order dated 29-11-2006 passed in Writ Petition No. 17705 of 2006, the revisional authority would have passed appropriate order only after taking that fact into consideration. However, as the matter is still pending before revisional authority, we do not consider it proper to express any opinion on the conduct of the applicant and leave it open for the revisional authority to pass appropriate order after hearing the petitioner and representative of the Municipal Corporation of Hyderabad.

Shri A. Satya Prasad, learned Special Government Pleader says that an application has been filed by Municipal Corporation of Hyderabad for vacating the order and the matter is likely to be taken up for hearing in near future.

In view of the above, we deem it proper to adjourn the case to April 16, 2007 with the hope and trust that the revisional authority will pass appropriate order in accordance with law after considering all the relevant facts."

In compliance of the Court's directive, Principal Secretary to Government, Municipal Administration and Urban Development Department, passed order dated 13.4.2007 whereby he granted one month's time to the revision petitioner to

comply with safety requirements as per G.O.Ms.No.154, MA, dated 13.3.2007 with liberty to the Corporation to take appropriate action if the conditions regarding fire safety etc. are not fulfilled. However, he did not decide the legality of notice dated 24.3.2007.

On 16.4.2007, the Court took cognizance of the direction contained in the order of the revisional authority and granted four weeks' time to M/s.Maheshwari Mega Ventures Limited to file reply affidavit. Simultaneously, Additional Commissioner (Planning) of the Corporation was directed to inspect the site and submit the latest status report. Accordingly, Shri K. Dhananjaya Reddy, Additional Commissioner (Planning), Municipal Corporation of Hyderabad inspected the building and submitted report dated 17.4.2007, which reads as under:

“INSPECTION REPORT OF THE ADDL. COMMISSIONER (PLNG.) WITH REGARD TO THE UNAUTHORISED CONSTRUCTIONS & VIOLATIONS IN PREMISES NO.6-3-650, SITUATED AT SOMAJIGUDA, HYDERABAD.”

- Ref: WP No.2968 of 2007 filed by M/s.Maheshwari Megha Ventures Ltd., against MCH and Government.

1.0 The Hon'ble High Court of A.P. has passed the following orders on 16.4.2007 in WP No.2968 of 2007.

“The first respondent Addl. Commissioner (Plng), MCH is directed to inspect the site by tomorrow and prepare a report on the basis of the present status of the building and also clearly indicate the violations of the plan, which does not appear to have ever been sanctioned. The report of Additional Commissioner be filed in the Court within two weeks.

2.0 As per the directions of the Hon'ble High Court, the Addl. Commissioner (Plg) accompanied by the City Planner-5, Asst. City Planner-5 and Town Planning Supervisor, Circle-5 inspected the site on 17.4.2007 and the following remarks are submitted:

3.0 Sri Rajkumar Malpani, Managing Partner for M/s.Maheshwari Builders submitted building plans in the year 1991 in MCH for construction of Cellar for parking, Ground, Mezzanine and first & 2nd floor for residential purpose in Premises No.6-3-650, situated at Somajiguda, Hyderabad. One Sri M.S. Satyanarayana has lodged a complaint petition with regard to the ownership aspect. Hence, the matter was under examination. In the mean time, the Govt. has issued new building rules in G.O.Ms.No.75, 76 and 77, dt.6.2.92. Therefore, the permission could not be released and the builders have been informed to submit the revised building plans as per the revised rules, whereas the builders have commenced the construction work without obtaining the permission. Hence, the respondent Corporation has directed the petitioner to stop the construction work. Aggrieved by this, builders have approached the City Civil Court and obtained injunction order dt.9.6.94 in IA No.673/94 in OS No.597/94 and proceeded with the construction work. In the year 1995, the builders have submitted revised building plans seeking permission for construction of commercial complex consisting with cellar for parking, ground & first floor for shops, 2nd, 3rd and 4th floors for office without submitting the proof change of land use. Hence, the revised building permission could not be considered.

4.0 The applicants have approached the Govt. with a representation dt.27.6.1995 for change of land use from residential to commercial use. In turn, the Govt. has called for the remarks from the first respondent. In reply, the MCH in Lr.No.1452/TP5/MCH/789 & 924, dt.28.12.95 have submitted the report to the Govt. Thereupon, the Govt. in G.O.Ms.No.247, MA, dt.23.5.96 have changed the land use from residential to commercial zone. Thereafter, M/s.Maheshwari Builders have approached the Govt. with a fresh representation seeking relaxations for the following constructions:

5.0 **Main Block: (Height of the Building: 17.65 mtrs.)**

Cellar	:	Parking
Ground Floor	:	Shops
First Floor	:	Shops
Second Floor	:	Offices
Third Floor	:	Offices
Fourth Floor	:	Offices
Fifth Floor	:	Offices

6.0 **Mini Block: (Height of the Building: 9.55 mtrs.)**

Ground Floor	:	Show Rooms
First Floor	:	Show Rooms
Second Floor	:	Show Rooms

7.0 The Govt. vide Memo No.13760/M1/96-2, MA dt.8.8.96 have called for the remarks of the Commissioner, MCH. The respondent Corporation has furnished the detail facts of the case to the Govt. The Govt., after carefully examining the issue, directed M/s.Maheshwari Builders to pay Rs.6,52,418/- towards penal amount. Accordingly, the builder has paid the said amount and thereafter the Govt., in GO Respondent.No.876, MA, dt.4.9.96 have issued relaxations for the aforesaid constructions with relaxations towards FSI, coverage and around setbacks, subject to verification of title & ULC clearance and to the following conditions:

1. NOC from the Director of Fire Services
2. Approval of Structural Designs & Analysis by CE., MCH & CE., HUDA
3. NOC from the Rajbhavan Authorities
4. To surrender the affected portion to MCH at free of cost.

Whereas the builders have not complied with the above condition No.2 & 3 and further proceeded with the construction work. Hence, the building permission could not be released.

8.0 In the year 1998 M/s.Maheshwari Builders have submitted application under Building Regularisation Scheme under G.O.Ms.No.419, MA, dt.30.7.1998 in File bearing No.6733/BRS/HO/98 and No.4096/A/BRS/HO/98. The Disposal Committee has recommended the said BRS applications subject to the following conditions:

1. Registered Sale Deed / Agreement Deed (Xerox copy attested by Gazetted officer)
2. Up to date property tax receipt
3. Copy of previous sanction plan, if any
4. Certificate from Director General of Fire Services Dept. Govt. of A.P.
5. NOC from Airport Authority of India
6. Structural Stability Certificate & Structural Designs by Licensed Engineer.
7. Subject to demolition of the 6th floor
8. to hand over the affected road widening portion.
9. to pay the necessary charges @ Rs.60/- per Sft. and Rs.100/- per Sft for the unauthorised construction.

Accordingly, a letter in Letter No.6733/BRS/HO/MCH/98 dated 25.4.2000, addressed to the builder to comply the objections so as to release the plan. But, the builder has not complied the objections raised and as such regularised plan was not released in favour of the builder.

Since the builder has not complied the above conditions, the BRS applications deemed to be closed as per the Govt. Memo No.8215/M1/2003-1, MA, dt.19.5.2003.

9.0 As per the existing ground position, the building is consisting with

Main Block

Relaxation as per G.O.Rt. No.876, MA, dated 14.9.1996.	Existing ground position	Violations
Cellar: Parking. Ground floor: Shops First floor: Shops Second floor: Offices Third floor: Offices Fourth floor: Offices Fifth floor: Offices, (i.e. Cellar + 6 floors)	Cellar: Parking Ground floor: Shops First floor: Shops Second floor: Offices Third floor: Offices Fourth floor: Offices Fifth floor: Offices Sixth floor: Offices	Sixth floor

Mini Block

Relaxations as per G.O.Rt.No.876, MA, dated 14-9-1996.	Existing ground position	Violations
Ground floor: Show rooms First floor: Show rooms Second floor: Show rooms	Cellar: parking Ground floor: shops First & Second floor: not constructed	C e l l a r and conversion show rooms into shops at Ground floor

10.0 The existing constructions are measured with reference to G.O.Rt.No.876, MA dt.4.9.96 and the details are mentioned hereunder:

Plot Area : **2383.17 sq. mtrs.**
Area affected in Road Widening : 154.27 sq. mtrs.
Net Area : 2228.9 sq. mtrs.

11.0 **Land Use:**

As per G.O.Ms.No.247, MA, dt.23.5.96 : Commercial use – Shops & Offices

12.0 **Road Widening:** Laid the RCC roof of cellar floor in the affected portion of Road Widening area to a depth of 1 mtr to 1.28 mtr to 1.5 mtr on southern side 40' Road.

13.0 **Coverage:**
As per G.O.Ms.No.876,MA dt.14.9.96: 1019.84 sq. mtrs (49.96%)
As per existing ground position: 1019.84 Sq. mtrs. (49.96%)
Excess Coverage: Nil.

14.0 **F.A.R.**
As per G.O.Ms.No.876, MA, dt.14.9.96: 4164.05 sq. mtrs (1:1.74)
As per ground position: 7870.00 sq. mtrs(1:3.30)
Excess F.A.R.: 3708.95 sq. mtrs(1: 1.56)
The excess FAR is because of the additional floor constructed and covering of all round balconies.

Addl. Floor area (i.e. 6th floor) 1908.80 m2
Covering of all round balconies 1800.15 m2

15.0 All round set backs:

Side	As per G.O.Rt.No. 876, MA, dt.14.9.96	As per existing ground position	Deviations/ Shortfall
Front (West) Road	8.0 Mtrs.	3.50 Mtrs.	4.50 mtrs.
Rear (East)	4.4 to 5.5 mtr.	1.90 to 2.50 mtr.	2.50 to 3.00 mtr.
Side-1 (North)	5.4 to 6.5 mtr	1.70 to 4.10 mtr.	3.70 to 2.40 mtr.
Side-2 (South)	3.18 to 4.9 mtr.	1.10 to 4.10 mtr.	2.08 to 0.80 mtr

16.0 Parking

Total existing built up area: 7870.00 sq. mtr
Required parking area: 1969.00 sq.mtr
Existing parking area: 1391.22 sq.mtr.
Shortfall: 576.00 sq.mtr.

17.0 Height of the Building:

Main Block:

As per G.O.Rt.No.876, MA, dt.14.9.96	Existing height	Excess
17.65 mtrs.	19.81 mtrs.	2.16 mtrs.

Note: The Regional Fire Services vide Rc.No.403/A2/97, dt.17.2.97 issued NOC to a height of 16.5 mtrs.

Mini Block:

As per G.O.Rt.No.876, MA, dt.14.9.96	Existing height	Excess
9.55 mtrs.	6.0 mtrs.	Nil

18.0 Hence, the violations of the building are as follows:

- F.A.R. is excess by 3708.95 sq. mtrs. (1 : 1.56)
- All-round setbacks violations:
 - Front (West): 4.50 mtrs.
 - Rear (East): 2.50 mtrs to 3.00 mtrs.
 - Side-1(North): 3.70 mtrs to 2.40 mtrs.
 - Side-2(South): 2.08 mtrs. to 0.80 mtrs.
- Parking: shortage by 576.00 sq. mtrs.
- Height: Main Block: excess by 2.16 mtr.

19.0 Status of the case in the City Civil Court:

M/s.Maheshwari Builders have withdrawn the IA No.673/94 in OS. No.597/94 on 13.2.2001.

20.0 The photographs showing the deviations of setbacks, height and front elevation are enclosed herewith.

Sd/-
(K. Dhananjaya Reddy)
Addl. Commissioner (Plng.)
GHMC”

On his part, Shri Raj Kumar Malpani, Managing Director of M/s.Maheshwari Mega Ventures Limited filed affidavit dated 14.5.2007 in which he denied the allegations of violation of the master plan, zonal plan and sanctioned plan.

In the meanwhile, Ehra Jadidi and four others, who are occupants of different portions of Maheshwari Chambers, filed WPMP No.15076 of 2007 for their impleadment as parties. They pleaded that they have purchased the portions of Maheshwari Chambers from M/s.Maheshwari Builders by registered deeds and their interest is likely to be adversely affected by the demolition of the building. Their application was allowed on 12.6.2007. Simultaneously, the Court took cognizance of the statement made by Shri Mahamood Ali that all the violations pointed out by the authorities including sixth floor construction have been removed and adjourned the case to 18.6.2007 with the direction to the Additional Commissioner (Planning), Greater Hyderabad Municipal Corporation to appear in person and assist the Court. On 18.6.2007, Shri K. Dhananjaya Reddy appeared and submitted that the owner of the building has not removed the deviations and has not taken fire safety measures. Shri Mahamood Ali, learned counsel for the added respondents submitted that it would have been better if the officer had inspected the site in the presence of the advocate of the impleaded parties. His request was accepted and Shri K. Dhananjaya Reddy was directed to carry out fresh inspection on 20.6.2007 at 11 a.m.

In furtherance of the Court's order, Shri Dhananjaya Reddy again inspected the building in the presence of Shri Mahamood Ali, Advocate and representative of the building. The report prepared by Shri Dhananjaya Reddy was filed in the Court on 5.7.2007 after supplying copies thereof to the counsel for respondent No.6 and the added respondents (Nos.7 to 11).

We have heard learned counsel for the parties and carefully scanned the record. Shri Raj Kumar Malpani, Managing Director of M/s.Maheshwari Builders submitted building plan in 1991 for construction of cellar for parking, Ground, Mezzanine and I and II Floors for residential purposes in premises bearing No. 6-3-650 situated at Somajiguda, Hyderabad. At that stage, one Shri M.S. Satyanarayana raised dispute regarding ownership of the plot. While the controversy was under consideration, the State Government issued new building rules vide G.O.Ms.Nos.75, 76 and 77, dated 6.2.1992. Therefore, representative of the builder was directed to submit revised application and plan. However, without obtaining sanctioned plan, the builder appears to have started the construction. Therefore, the Corporation directed it to stop the work. The builder filed O.S.No.597 of 1994 along with I.A.No.673 of 1993 and succeeded in persuading the Civil Court to pass an order of injunction and by taking advantage of the order of injunction, the builder proceeded with the construction of the building.

In 1995, the builder submitted revised plan for construction of commercial complex consisting of cellar for parking, Ground and I Floor for shops and II, III, IV and V Floors for office. On 27.6.1995, the builder approached the government for change of land use from 'residential' to 'commercial'. The State Government called for the remarks of the Corporation and them permitted change of the land use from residential to commercial. Soon thereafter, the representative of M/s.Maheshwari Builders filed application for relaxation of the following conditions:

"Main Block: (Height of the Building 17.65 mtrs.)

Cellar	:	Parking
Ground floor	:	Shops
First floor	:	Shops
Second floor	:	Offices
Third floor	:	Offices
Fourth floor	:	Offices
Fifth floor	:	Offices

Mini Block: (Height of the Building 9.55 mts.)

Ground floor	:	Show rooms
First floor	:	Show rooms
Second floor	:	Show rooms

After examining the report of the Commissioner of the Corporation, the State Government asked the builder to pay Rs.6,52,418/- towards penal amount. The builder deposited the amount. Thereafter, the State Government relaxed the FSI, coverage and all around set backs subject to verification of title and ULC clearance. In 1998, M/s.Maheshwari Builders submitted application for cellar + Lower ground floor, Upper ground floor + 5 floor (i.e. cellar + 7 floors). The Disposal Committee recommended the application of M/s.Maheshwari Builders subject to certain conditions. Accordingly, letter No.6733/BRS/HO/MCH/98, dated 25.4.2000 was addressed to M/s.Maheshwari Builders to comply with the conditions. The builder did not comply with the condition. Therefore, BRS Disposal Committee did not accept its application for grant of permission.

On 21.8.2006, Commissioner of the Corporation issued notices to the occupiers under Section 636 of the 1955 Act proposing demolition of the constructions made in violation of the sanctioned plan. However, no notice was issued to the builder/ owner of the property. This is the reason why the Court disposed of the writ petition by directing the competent authority to issue appropriate notice to all the petitioners and other purchasers/ occupiers, give them opportunity and then pass appropriate orders in accordance with law. The Court then took suo motu cognizance for fixing the responsibility of those who facilitated construction of the building in violation of the sanctioned plan. During the

pendency of the suo motu case, the builder and other occupiers became parties.

The two status reports filed by Shri K. Dhananjaya Reddy show that the violations have not been removed. This has been disputed by respondent Nos.6 to 11. Paragraph 9 of the last report submitted by Shri K. Dhananjaya Reddy, which shows the violations, reads as under:

9.0 As per the existing ground position, the building is consisting with:

Main Block

Relaxation as per G.O.Rt. No.876, MA, dated 14.9.1996.	Approved under BRS subject to certain conditions which were not complied Cellar:	Existing ground position	Violations
Cellar: Parking. Ground floor: Shops First floor: Shops Second floor: Offices Third floor: Offices Fourth floor: Offices Fifth floor: Offices, (i.e. Cellar + 6 floors)	Cellar Parking Ground floor I floor II floor III floor IV floor V floor VI floor (i.e. Cellar + 7 floors)	Cellar: Parking Ground floor: Shops First floor: Shops Second floor: Offices Third floor: Offices Fourth floor: Offices Fifth floor: Offices Sixth floor: Offices (i.e. Cellar + 7 floors) (8 th floor was demolished after BRS approval)	One extra floor with reference to G.O.Rt.No.876, MA, dt. 14/9/96.

Mini Block

Relaxations as per G.O.Rt.No.876, MA, dated 14-9-1996.	Existing ground position	Violations
Ground floor: Show rooms First floor: Show rooms Second floor: Show rooms	Cellar: parking Ground floor: shops First & Second floor: not constructed	Cellar and conversion show rooms into shops at Ground floor

Shri Mahamood Ali, learned counsel for the added respondents filed statement showing removal of the violations or compliance of the conditions.

Having considered the affidavits and objections filed on behalf of respondent Nos.6 to 11, the inspection reports submitted by Shri K. Dhananjaya Reddy, the comparative statement produced by Shri Mahamood Ali, we are prima facie of the view that the construction made by M/s. Maheswari Mega Ventures Limited cannot be treated as regularised. This inference of ours is founded on the fact that M/s. Maheswari Mega Ventures Limited did not comply with the conditions specified in letter dated 25.4.2000.

We would have examined the issue of the alleged illegal construction raised by respondent No.6 in detail, but keeping in view the fact that the concerned authority of the Corporation has already initiated action for demolition of the

alleged illegal/unauthorised construction, we refrain from issuing mandatory order and dispose of the writ petition with the direction that the competent authority of the Corporation shall, after giving opportunity of hearing to respondent Nos.6 to 11 or their authorised representatives, pass appropriate order within two months. While doing so, the concerned authority shall consider the objections/representation filed by respondent Nos.6 to 11 and also keep in view the order of this Court in Writ Petition No.17597 of 2006 – Y. Jyothirmoy and others v. The Municipal Corporation of Hyderabad, Hyderabad and another, decided on 19.1.2007. Respondent Nos.6 to 11 shall also be free to avail appropriate legal remedy if final order passed by the competent authority is adverse to their interest.

If the competent authority comes to the conclusion that the construction has been raised in violation of the master plan, zonal plan or the sanctioned building plan, then it shall be free to demolish such construction.

G.S. SINGHVI, CJ

July 24, 2007

C.V. NAGARJUNA REDDY, J

SVS

[\[1\]](#) (1999) 6 SCC 464

[\[2\]](#) (2002) 4 SCC 1

[\[3\]](#) (2004) 8 SCC 733

[\[4\]](#) (2005) 9 SCC 1

[\[5\]](#) (2005) 3 SCC 16

[\[6\]](#) (2006) 4 SCC 109

[\[7\]](#) (2006) 3 SCC 399